

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA

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In Re:) Case No. 19-30088-DM
) Chapter 11
PG&E CORPORATION AND PACIFIC)
GAS AND ELECTRIC COMPANY,) San Francisco, California
) Thursday, June 11, 2020
Debtors.) 1:00 PM
)

HEARING REGARDING JOINT
STATEMENT OF THE TCC,
TRUSTEE, AND AD HOC GROUP OF
OBJECTORS IN CONNECTION WITH
MEMORANDUM ON OBJECTION OF
ADVENTIST HEALTH, AT&T,
PARADISE ENTITIES, AND
COMCAST TO TRUST DOCUMENTS.
FILED BY OFFICIAL COMMITTEE
OF TORT CLAIMANTS

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE DENNIS MONTALI
UNITED STATES BANKRUPTCY JUDGE

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1 SAN FRANCISCO, CALIFORNIA, THURSDAY, JUNE 11, 2020, 1:00 PM

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3 (Call to order of the Court.)

4 THE COURT REPORTER: This is the bankruptcy court for
5 the Northern District of California. Court is now in session,
6 the Honorable Dennis Montali presiding. Matter of PG&E
7 Corporation.

8 THE COURT: Good afternoon, everyone, this is Judge
9 Montali. I'm only anticipating a very brief hearing on a very
10 limited issue, and I have a long call list, but I don't see
11 some names on there that I expected to hear, so let me ask if
12 the following counsel are present.

13 Mr. MacConaghy, are you on the call?

14 MR. MACCONAGHY: I am, Your Honor.

15 THE COURT: Okay.

16 MR. MACCONAGHY: John MacConaghy, special counsel --
17 go ahead, sorry.

18 THE COURT: Thank you. All right. Oh, I'm sorry.
19 Finish your title.

20 MR. MACCONAGHY: John MacConaghy, special counsel for
21 the official committee of tort claimants.

22 THE COURT: Ms. Winthrop, are you on the call?

23 MS. WINTHROP: Good afternoon, Your Honor, Rebecca
24 Winthrop of Norton Rose Fulbright, on behalf of the Adventist
25 claimants.

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1 THE COURT: Mr. Mintz?

2 MR. MINTZ: Good afternoon, Your Honor, Benjamin
3 Mintz, Arnold & Porter, counsel for AT&T. I'll be speaking on
4 behalf of the ad hoc group today.

5 THE COURT: Mr. Goldblatt? Oh, well actually, I don't
6 need to hear from other people in your group if Mr. Mintz is
7 going to be the spokesperson.

8 How about Mr. Molton? Are you on the call, Mr.
9 Molton?

10 MR. MOLTON: Good afternoon, Your Honor, I hope you
11 can hear me. I'm here. And Mr. MacConaghy and I are going to
12 be dividing responsibilities today.

13 THE COURT: So I don't know if you're going to care,
14 but we have MacConaghy, Mintz, Molton, and Montali, all "M"s.
15 So I have a question. Well, okay.

16 Well, all right, so let's start with Mr. Mintz on the
17 position of your side for what we'll call issue one. What I
18 found confusing about the issue was not what you said, but what
19 the other side said. Because you said for the objectors you
20 want -- you want them to have the presumption and the
21 concession that PG&E made about causing the fire. And the
22 other side not only takes issue with that, but argues that it
23 has to keep its defenses. But I didn't understand that you are
24 suggesting that the other side loses any defenses. And am I
25 correct? You do not contend that the trustee can't raise any

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1 defenses to the objectors; am I correct?

2 MR. MINTZ: You're absolutely correct, Your Honor.
3 You've jumped to, I think, the third point I was going to make,
4 which is that's a total red herring and really a little bit
5 disingenuous. That defense is fully preserved both during the
6 claim determination process and during the judicial review
7 process, and documents are clear in that regard. And if they
8 think it's not, clarify it, but that's clearly a very different
9 issue from imposing a burden on us to have to prove PG&E's
10 negligence.

11 THE COURT: Okay, but let's test this and then I'll
12 listen to both sides.

13 Mr. Mintz, you represent AT&T. AT&T, I guess, from
14 what I've read, according to some, may have some culpability in
15 the fire. So if the matter doesn't go through the claims
16 resolution process to conclusion, then under my decision, AT&T
17 would have a right to go to court, some court somewhere, and
18 your argument is we should start with the presumption, or the
19 fact, that PG&E has admitted to causing the fire. Or maybe I'm
20 not phrasing it correctly, but then you have to put on all of
21 your damages case, and then the other side would put on its
22 defenses, including AT&T caused the fire or contributed to the
23 fire or did whatever, any defense available to it. And that's
24 where I understand to be the outcome, and apparently you're
25 agreeing with me.

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1 MR. MINTZ: Your Honor, I take issue with the notion
2 that AT&T has culpability, but for hypothetical argument, I
3 agree with that outcome.

4 THE COURT: Yeah.

5 MR. MINTZ: That is exactly how it would play out
6 under how we think it should work.

7 THE COURT: Yeah. I didn't expect you to concede that
8 AT&T did anything wrong, but the point is -- the point is your
9 opponent, whether it's the trustee or whatever, I mean, let's
10 just frame it. The resolution process isn't successful.
11 Whether you initiate an action somewhere, in a court or
12 whatever, it doesn't matter, you still have to prove your
13 damages. If you don't prove any damages, you're out. If you
14 prove damages, the other side proves whatever that offsets,
15 diminishes, et cetera, your damage. Okay.

16 Well, if you want to make any further argument about
17 what you want, I'll let you because that was the deal here, but
18 I think I got the point of what your side wants. Why don't you
19 say -- why don't you say whatever you want to say, okay?

20 MR. MINTZ: Okay. I'll be quick, Your Honor.

21 You know, this was an outcome from Your Honor's
22 ruling. We had a right of judicial review, and that we were
23 then directed to work with the trustee and the TCC on drafting
24 that, and thought that would be pretty easy to draft. But they
25 clearly had the goal of trying to disfavor the claimants who

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1 exercised their judicial review right, and that was throughout
2 the process. They started that in the disclosure statement, as
3 Your Honor may recall, that they had language that said they
4 were going to disfavor large claimants. We solved that
5 problem, and we have language in the trust documents that says
6 all claimants will be treated the same, regardless of size, but
7 they keep coming at us.

8 And now they started with a notion that if you sought
9 the judicial review right, you weren't going to get paid for an
10 extra two years. So you'd go through the whole process, you'd
11 win before the court, and then they were going to hold up your
12 money for two years. So we persuaded them to take that off the
13 table, and then they came back with this.

14 So it's clearly intended to be punitive. It's unfair.
15 It's not equitable. It contradicts the basic underpinnings of
16 the settlement between the TCC and PG&E, and there's no
17 legitimate basis for it other than to disadvantage us, those
18 who exercise the right of judicial review. Which we may not
19 ultimately see, but it's an important right that we've sought
20 and Your Honor upheld, and we shouldn't be prejudiced if we
21 exercise that right. It's just a basic rule of fairness that
22 all claimants be subjected to the same standards, whether that
23 goes for the trust determination process or under judicial
24 review.

25 The last point I would make, Your Honor, is that if

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1 this provision is sustained, the plan is going to need to be
2 modified in a material way to make clear that those who seek
3 judicial review are permitted to take discovery from PG&E to be
4 able to meet its evidentiary showing. That's currently
5 precluded by the plan, and that's because PG&E has effectively
6 acknowledged the negligence and that's what the predicate for
7 the settlement is. But if we have to go back to basics and
8 have to prove up those issues, we're going to need to take the
9 discovery from the debtor. That's going to be burdensome on
10 the debtor, and I assume the debtors aren't going to be happy
11 with that.

12 But if you don't allow that, and at the same time
13 require us to make that evidentiary burden, you've totally
14 vitiated the judicial review right that Your Honor's already
15 sustained. It would be totally hollow if we don't have a right
16 of discovery to be able to prove up the issue.

17 THE COURT: Okay. I got it.

18 MR. MINTZ: Thanks, Your Honor. I assume I'll come
19 back on second point after we work our way through this one.

20 THE COURT: Right. Okay.

21 Mr. MacConaghy or Mr. Molton; who wants to lead off?

22 MR. MOLTON: Judge, this is going to be David Molton
23 of Brown Rudick, for the trustee, and it's a pleasure, again,
24 to appear in front of you.

25 I just want to say one thing. It's good we heard from

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1 Mr. Mintz that he's agreeing, and I thank Your Honor for asking
2 that question, that the trust's full setoff and defense rights
3 are preserved and that they're not contesting the ability of
4 the trust to assert those important rights in connection with
5 any claim that's made by the objectors.

6 I think what is at essence here, in terms of the fact
7 that the objectors made a very, very -- the crux of their prior
8 objection was they wanted a judicial review. They got it. And
9 what our position is, Judge, they need to live with it, and
10 that includes the trust's right to dispute liability. And if
11 Your Honor gives me a second, I'll try to articulate on our
12 position, because I think Mr. Mintz and his framing of
13 unfairness and oppressiveness is being a little rich in that.

14 In their objection, Judge, the objectors argued that
15 the "adjudication of their claims consistent" -- argued for the
16 "adjudication of their claims, consistent with the statutory
17 claims allowance process". They cited Collier for that
18 proposition, Your Honor, and reminded us all that the
19 bankruptcy court, in such a claims adjudication process, always
20 retains the jurisdiction and right to determine the
21 allowability of the claim, which implicates liability.

22 Judge, in the Ninth Circuit, de novo review means
23 that. It means that a court consider a matter anew, as if it
24 had not been heard before and as if no decision had been
25 rendered previously. And I can cite a host of decisions, but

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1 just here, Your Honor, In re: Jeffries, B.R. 373 at 377,
2 that's the Ninth Circuit BAP, 2012, and then the Ninth Circuit
3 itself, not in a bankruptcy case, but dealing with the concept
4 in Bartoloma v. Sessions, 904 F 3d. 803, 812, and that's a 2018
5 case.

6 Your Honor, the operation of two provisions of The
7 Code, which Adventist and the objectors -- which the objectors
8 asked for plainly provides that upon an objection, a claimant
9 has to prove each element of their unliquidated claim for that
10 claim to be allowed, and I'm referring to Section 502 of the
11 Code, as Your Honor knows.

12 Your Honor, the opt-out to the Court that the
13 objectors won by way of your decision, pursuant to the CPO we
14 proposed, in a part that is not challenged, creates a contested
15 proceeding; meaning for all intents and purposes, it operates
16 as an objection. And that allows the bankruptcy court, in a
17 judicial de novo review, the very thing that you gave the
18 objectors, the ability to determine a right -- whether the
19 claims should be allowed, or a right to payment. And in so
20 doing, Your Honor, pursuant to 502(b)(1), to consider whether
21 that claim is unenforceable against the debtor, or here its
22 successor, under (indiscernible).

23 THE COURT: But Mr. Molton, what would happen -- Mr.
24 Molton, we've got --

25 MR. MOLTON: Yes, sir.

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1 THE COURT: We know that Adventist is a very large
2 creditor, we know that AT&T and Comcast are pretty well-off,
3 but you know, there are some individuals that preserve their
4 rights, too. There's a gentleman named Mr. Carlson, who
5 participated in the oral argument and should have been involved
6 in this, I don't know if he's on the phone today, but what,
7 does Mr. Carlson have to come in and prove that PG&E was
8 negligent?

9 MR. MOLTON: Judge --

10 THE COURT: That doesn't seem right.

11 MR. MOLTON: -- that's a great question, and how we've
12 written the trust protocols, the CRP, Your Honor, is that the
13 trustee retains the ability to waive or concede any fact or
14 issue of law. So I would imagine what would happen is that Mr.
15 Carlson would come to the trustee, if he wants to opt into the
16 court system, and say what Your Honor just said. And that will
17 be a decision that Judge Trotter, in his discretion, under the
18 circumstances of each case, will make, in accordance with
19 equity, justice, and fairness. So we provided that --

20 THE COURT: Well, I don't want to -- I don't want to
21 get bogged down on the specifics --

22 MR. MOLTON: Yeah.

23 THE COURT: -- of Mr. Carlson, so let's just have Mr.
24 Hypothetical. So if Mr. Hypothetical goes through the CRP and
25 at the end of the day, after going through the multi-tier

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1 level, the decision is, Mr. Hypothetical, you're entitled to a
2 hundred thousand dollars and he says, no, I don't like that. I
3 want to take it to court. Then I presume, what, the trustee
4 can then waive it at that point and say we'll give you the
5 150,000 or 200,000? I mean, it seems to me --

6 MR. MOLTON: Well, Judge --

7 THE COURT: -- you've got to have some rules of
8 engagement or not. When does it get -- become operative?

9 MR. MOLTON: We do, Judge, and Your Honor noted in
10 your opinion, after review of the CRP, that was fair and
11 equitable and accorded with due process. What would happen is
12 that the trustee -- if Mr. X or Ms. Y, who has this ability,
13 decided to exit to the court system and contest the trustee's
14 determination and believes that being held to show the element
15 of liability would be unfair, an impediment, overly burdensome,
16 that person or entity would make that position clear to the
17 trustee, who would then decide in the case --

18 THE COURT: What if AT&T said it? I don't know what
19 their total claim is, but if their claim is 500 million
20 dollars, what do they say? Well, that's burdensome because
21 PG&E isn't cooperating and they don't want to cooperate with
22 discovery anymore, they're gone?

23 MR. MOLTON: Judge --

24 THE COURT: But (indiscernible) -- but we agreed to
25 make this quick, so I've got to go to one more question.

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1 MR. MOLTON: Okay, because --

2 THE COURT: What would happen if -- what would happen
3 if one of these objectors takes it to trial and the court
4 determines that there was no liability on the part of PG&E,
5 then what happens to the entire CRP? Do we have inconsistent
6 determinations?

7 MR. MOLTON: No, Your Honor, because under the CRP,
8 one of the rules of that, which is a result of a settlement
9 that was voted on overwhelmingly, as Your Honor noted and
10 others noted by an overwhelming majority of the affected class,
11 provides that for the purpose of the CRP, PG&E's negligence
12 and/or the fact that its equipment caused the fire will be
13 assumed.

14 THE COURT: No, I know that. I'm well aware of that.

15 MR. MOLTON: Yeah.

16 THE COURT: I'm well aware of that, but there's
17 something wrong with this picture if you have a process
18 involving tens of thousands of fire claimants who are operating
19 under an assumption -- on a presumption, essentially a
20 stipulation, that PG&E caused the fire and was negligent, but
21 then what would happen if you had a judicial determination on a
22 particular fire that it wasn't negligent? Anyway, it's just
23 that -- I'm just putting in the mix of making a decision.

24 Are you going to --

25 MR. MOLTON: Judge, if I could --

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1 THE COURT: -- Mr. MacConaghy, are you going to argue
2 on this point, too, or is this going to be your point of view?

3 MR. MOLTON: No, Judge. It's just Mr. MacConaghy --

4 THE COURT: Okay.

5 MR. MOLTON: -- is going to be arguing point two.

6 THE COURT: Okay.

7 MR. MOLTON: But Your Honor, that would be the
8 judgement in connection with that particular court proceeding,
9 but it would not effect the overwhelming amount of claims
10 processing and treatment that is undertaken in accordance with
11 a claims protocol that Your Honor has already found to be fair,
12 equitable, and consistent with due process.

13 THE COURT: And Mr. Molton, in the Takata case, was
14 there any concession by Takata that they were liable and that
15 what had to be adjudicated was damages? Or would you know one
16 way or the other, because --

17 MR. MOLTON: Judge, yeah, I think I do.

18 THE COURT: -- if you don't know, I'm not --

19 MR. MOLTON: -- and I'll tell you why --

20 THE COURT: Okay.

21 MR. MOLTON: -- because I actually represent the
22 trustee in Takata -- the post-confirmation trustee and the DOJ
23 special master of the Takata restitution fund. So I can tell
24 you, Takata dealt with claims against the debtor in a number of
25 ways, as Your Honor noted. With respect to the rupture claims

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1 that caused horrific physical injury, those were channeled, all
2 of them, to a trust that had, as Your Honor noted, no exit, and
3 were adjudicated therein. And my understanding -- again, I
4 don't have it in front of me -- is that the liability of Takata
5 was not an issue with respect to that trust.

6 However, Your Honor, there were many other personal
7 injury claims asserted against Takata that were not channeled
8 into that (indiscernible) trust, but were exactly the point
9 of -- were given, basically, claims allowance in front of Judge
10 Shannon in bankruptcy -- in Delaware Bankruptcy Court. With
11 respect to each one of those, Your Honor, that was then subject
12 to Section 502 and other claims allowance process, the trustee
13 retains the right to contest Takata's liability and has done so
14 repeatedly in connection with many, many cases that have gone
15 to the, what I call, the claims allowance process in the
16 bankruptcy court.

17 THE COURT: Okay. Last question. What do we do with
18 the inverse condemnation principle that applies to a bare
19 portion of the measure of the damage, certainly that the
20 corporate entities here, not the ones that -- not the
21 individuals who might have suffered personal injury, but I
22 wouldn't imagine that AT&T and Comcast suffered any personal
23 injury, but I bet you they got a large component of their
24 claim, as based upon inverse condemnation. Doesn't that --
25 what do we do about that?

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1 MR. MOLTON: Judge --

2 THE COURT: Do we presume that PG&E didn't even cause
3 the fire?

4 MR. MOLTON: No, Judge. My understanding is -- and I
5 was baffled to some extent by the statement that my friends,
6 the objectors, who basically raised this issue, because there's
7 nothing in their claims protocol that does away with the
8 ability of a claimant, whether it be one of the objectors or
9 anyone else, to assert an inverse condemnation claim. Indeed,
10 in the trust, Your Honor, the -- that the fires -- that PG&E's
11 equipment was a substantial factor with respect to the fire --
12 with respect to the injury is presumed, as Your Honor knows.

13 That issue, again, to the extent there is -- we don't
14 purport to deny any of the objectors' ability, if they decide
15 to exit into the court system, to make, assert, and prosecute
16 and run an inverse condemnation claim. All we're saying is, to
17 the extent they have to have any elements to prove of that
18 case, one of which, my understanding, although I'm not an
19 expert, may be that the equipment of P&G (sic) was a
20 substantial factor in the fire, that's going to be their proof,
21 like in any 502 proceeding.

22 THE COURT: Okay. Look, I -- here's my take on this,
23 and maybe I was a little bit loopy-goopy in using the word de
24 novo when I wrote my decision for -- on the objectors. You
25 know, the issue that was -- Mr. Molton, you weren't involved in

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1 it, but you know about it, and it was really my being satisfied
2 by the objectors that it was inappropriate to close the door to
3 the courthouse. And I also made the point that my own guess is
4 that, despite what Mr. MacConaghy argued at the oral argument,
5 this wasn't going to be floodgates. It was going to be narrow,
6 and I still believe it. I hope I'm right about that, but I
7 didn't even think about the question of whether, somehow, I was
8 opening the door for making the objectors prove something that
9 was essentially handed to them as part of the rules for the
10 CRP, and I certainly didn't think about, it wasn't on my mind
11 at all because it had nothing to do with the issues, of whether
12 this would be an imposition on PG&E to have to respond to
13 discovery. I mean, I don't recall that that issue was ever,
14 ever even discussed, but again, that was only, what, three
15 weeks ago and I've only -- you know, the last three weeks, have
16 been a little -- I've been a little busy, as all of you have.
17 But I --

18 MR. MOLTON: An eternity ago, Your Honor.

19 THE COURT: Yeah, right.

20 But I have a -- to me, to do what the trustee and you,
21 Mr. Mulligan, you're arguing, is to make -- it makes a
22 difficult situation, perhaps, for you and the trustee even
23 worse. It wasn't something that was on my radar at all, and I
24 think that it would be too disruptive to the orderly course of
25 business for the trust going one way and the reorganized

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1 company going the other way. Obviously it's not that simple,
2 but I'm satisfied that the objectors have the better argument
3 here and the presumption ought to be operating consistently, in
4 or out of court, that it's -- well, I'll just leave it at that.
5 I am gratified that I wasn't and the objectors weren't trying
6 to take away any defenses the trustee has, and that's clear.

7 So to me, it would be, frankly -- and this is an
8 oversimplification and you counsel that are drafting and
9 tweaking these documents will have to be the drafters, but if
10 at the end of the day one of these objectors gets an adverse --
11 or a decision that it's unhappy with from the trustee, they
12 just go to the next step. And so it's not really de novo
13 review. It's they go into that court with the same -- I'm
14 going to use the wrong word here -- presumption.

15 It's almost like -- it's almost like there's already
16 been a determination of liability. What the plaintiffs have to
17 prove is their damages, and they have to overcome whatever
18 defenses the trustee may have. So I believe that that's
19 consistent with the perception that I had when I was thinking
20 about the issues, that it's not to start over in a literal de
21 novo setting, and that -- and if I created the problem by using
22 that term, I'm sorry. I should have, perhaps, been more clear,
23 but it simply wasn't something that was on my -- on my mind.
24 So with that, I'm prepared to say that's my decision, and
25 that's what I'm going to stick with.

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1 MR. MOLTON: Thank you, Judge. I appreciate that,
2 and I also appreciate the fact that we had the record
3 concession that the defenses and offsets are intact, because we
4 do understand, as Your Honor noted, that there is credible
5 evidence that one or more of the Bay Fires were also caused by
6 failures of AT&T and Comcast equipment.

7 THE COURT: Yeah, look if Mr. Mintz --

8 MR. MOLTON: So it's important for the Trustee --
9 yeah.

10 THE COURT: If Mr. Mintz or the objectors had even put
11 in one sentence that says by the way, we don't think the
12 Trustee should have any defenses, I think I would have taken
13 issue with it right from the outset, because it just -- it
14 ain't right, and it isn't right. So that's the fairest I can
15 be, and I note that the response that the debtor filed about
16 this issue was they want me to do the right thing, and that's
17 what I'm trying to do.

18 Okay, let's switch to the second issue.

19 MR. MOLTON: I appreciate it, Judge. Thank you.

20 MR. KAROTKIN: Your Honor?

21 MR. MOLTON: And thank you for hearing us.

22 MR. KAROTKIN: Your Honor?

23 THE COURT: Yes, sir. Yes, who's that?

24 MR. KAROTKIN: Sorry, Stephen Karotkin for the
25 debtors.

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1 THE COURT: Yes, sir.

2 MR. KAROTKIN: I have nothing -- as you noted, we did
3 file a pleading with -- mainly with respect to the second
4 issue, which is relatively new language. It's not -- as we
5 noted, it is not in any proposed confirmation order that was
6 filed with the Court, and it significantly impacts the debtors
7 rights, so we wish to be heard.

8 I will note that we have had discussions with the TCC
9 about this language, as well as other recent proposed
10 modifications to the trust documents, as well as significant
11 proposed modifications there suggesting to the confirmation
12 order. We had a call with them before this call, and we all
13 agreed we would try to work out that language over the next
14 couple of days.

15 So particularly, Your Honor, with respect to this
16 paragraph that you're going to be discussing now, we do have
17 serious issues. We think it goes beyond the scope of what's
18 appropriate in the plan. I know that counsel for the trust
19 was, I think, suggesting that retention of all setoff rights is
20 appropriate, but this language needs to be appropriately
21 circumscribed, and we've agreed with Mr. Julian and his
22 colleagues to try to work on that language in the next few
23 days, as well as other issues with respect to the trust
24 documents, and the proposed confirmation order to try to come
25 to a resolution.

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1 But as I said, this proposed language --

2 THE COURT: But Mr. Karotkin, you're --

3 MR. KAROTKIN: -- is very problematic.

4 THE COURT: You're satisfied, I take it, if that just
5 stays out, right?

6 MR. KAROTKIN: Yes, we are --

7 THE COURT: Is that all I have to do?

8 MR. KAROTKIN: I believe we are, Your Honor, but there
9 will -- they have raised similar issues in connection with
10 proposed modifications, excuse me, to the confirmation order
11 relating to setoff, and recoupment, and those types of issues,
12 and what rights the trust would have, and it really does have
13 to be appropriately sorted out in the context of what is
14 actually being assigned to the trust, and what rights they
15 have, and I'm just very, very concerned that that not be done
16 on the fly.

17 THE COURT: No, that's fine, and I'll just say I'm
18 going to stick with the understanding here that this is a very
19 narrow matter that's been teed up for me to hear today.
20 Obviously, it's a broader issue for the reasons you've stated.

21 So I'll let -- Mr. Karotkin, I'll come back to you
22 when we hear from the others.

23 MR. KAROTKIN: Okay, thank you, sir.

24 THE COURT: So Mr. MacConaghy, you said you're going
25 to -- and Mr. Mintz, is this yours again, or who said --

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1 MR. MINTZ: It is me again, Your Honor.

2 THE COURT: -- which one is going to --

3 MR. MINTZ: It's Mr. Mintz.

4 THE COURT: Okay. So let me --

5 MR. MINTZ: I'm going to argue this again.

6 THE COURT: Okay. Let me again make an opening
7 observation, and maybe I'm just overworked these days, but
8 maybe it's some colloquy that was had during the trial. I
9 think there's a conflating of concepts here between assuming a
10 contract, and assigning rights and causes of action. So maybe
11 this is old law school 101, but to me if there is a right to do
12 something, or there is a cause of action, which means somebody
13 has a claim, or a right to go after somebody else, those really
14 have nothing to do with executory contracts.

15 And so when the debtor under its 365 via the plan is
16 assuming thousands of pages of contracts, it is assuming the
17 burdens, and the benefits, but I think to my mind, that
18 separates from something that was an entitlement that it had
19 that perhaps is no longer part of the contract. And again, I
20 might be over simplifying, so I'm focusing more on the phrase,
21 "cause of action" than "rights" because obviously if one is a
22 party to a contract, you have rights, and duties, and
23 obligations.

24 If you have a cause of action, even though it may have
25 come from the contractual relationship, but you are the

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1 prospective plaintiff, and you are the prospective assignor of
2 the executory contract, they go in different directions, and
3 therefore, when you assume the contract, you say I'm going to
4 take on the benefits, and I'm going to carry the burdens, but
5 why the way, if I have a cause of action to sue somebody, like
6 my counterparty, that's different.

7 So I don't think to me, conceptually, what PG&E, the
8 debtor coming out of the Chapter 11 is keeping its rights, and
9 causes of actions, except those which it specifically has
10 assigned to the trust under provisions that everybody's
11 familiar with, and I separate the concepts from what seems to
12 be merged here.

13 So in my mind, Mr. Karotkin is right, that sentence
14 should come out, and therefore, if PG&E had a right to sue or
15 had a right that is somehow not necessarily integral to the
16 executory contract that's being assumed, it can do what it
17 wants with those causes of action, and it's chosen to give some
18 of them to the trust and keep the balance, and therefore, I am
19 not inclined to be persuaded that I should let these concepts
20 mixed together here.

21 So Mr. Mintz, you won the first round. You might have
22 a tougher time winning the second one, but you're up.

23 MR. MINTZ: Okay. So let me try to breakdown these
24 issues, Your Honor. With respect to those assigned rights and
25 causes of action that are outside of the contracts, for

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1 example, if there is an independent tort claim that PG&E has
2 against one of the counterparties to its assumed contracts, I
3 take no issue with the notion that that can be assigned to
4 trust.

5 My issue is with respect to those rights and causes of
6 action that arise under the contract itself, and by virtue of
7 365, we're all familiar with the notion that a contract can't
8 be cherry-picked. And my position is that if the debtor
9 assumes the contract, it can't use Section 365 to assign rights
10 under that contract.

11 What it can do, Your Honor, and maybe this is what
12 Your Honor is thinking about, is it could assign those rights
13 under applicable nonbankruptcy law, or under the terms of the
14 contract, if the terms of the contract permit it, or if
15 applicable nonbankruptcy law permits it, but what I'm concerned
16 about is that the language as phrased, says that they can
17 affect that assignment under applicable law.

18 And so the way I proposed to deal with the issue was
19 to suggest that language that would say that nothing in the
20 order would prejudice the rights of parties with respect to the
21 question of whether the assigned rights under the assumed
22 executor contract were, in fact, assignable, pursuant to
23 applicable contract in nonbankruptcy law. Obviously, Your
24 Honor can make that determination on the thousands or tens of
25 thousands of contracts that are being assumed at this juncture,

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1 and the answer may vary depending on the contract at issue, and
2 the cause of action at issue, but it should be the case that
3 Your Honor is in position to rule on a blank basis, that that
4 can be done across all contracts, and across all causes of
5 action. It's just not permitted by 365, and it's a question
6 that I think deserves inquiry into the underlying facts, and
7 legal issues that would apply on a contract by contract basis.

8 THE COURT: So Mr. Mintz, if I have a contract with
9 AT&T to provide internet service, and I file bankruptcy and I
10 want to assume that contract, but last week the internet went
11 down and I suffered damage, but I want to assume the contract
12 because I want to use AT&T going forward, doesn't my cause of
13 action separate? Isn't it something independent of my
14 contractual relationship with AT&T?

15 So I assume the contract, but I assign my cause of
16 action for loss of whatever, business opportunity because of
17 something that happened, why is my harm that I suffered, which
18 gave rise to a cause of action, why is that still part of the
19 contract, rather than something that came about because of the
20 contractual relationship?

21 MR. MINTZ: Well, it's a claim that --

22 THE COURT: In other words, you assume --

23 MR. MINTZ: -- arises --

24 THE COURT: -- you assume rights and obligations, but
25 that doesn't mean you -- that going with it is a claim that I

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1 have against the counterparty.

2 MR. MINTZ: Well, Your Honor, it arises under the
3 contract, and the contract's going to govern under what
4 circumstances, and limitations may be placed on that claim, if
5 for example, (indiscernible) assumption the debtor breaches the
6 contract, that may have ramifications for the claim, and cause
7 of action that existed at the time the contract was assumed.
8 The contract may have provisions that address that kind of
9 issue, and it's not clear what would happen in this
10 circumstance where the claim was assigned before that reach.

11 But we --

12 THE COURT: Well, suppose my --

13 MR. MINTZ: -- have our rights under our contract --

14 THE COURT: Suppose my contract with AT&T had a
15 mandatory arbitration clause, I presume if I were assigning my
16 claim for damages to somebody, or I wanted to preserve it for
17 myself, or I would -- the arbitration provisions would survive,
18 but it's still not a right that is, in my mind, encompassed
19 within the assumption process.

20 In other words, there's nothing in 365 that talks
21 about assuming causes of action. You assume benefits and
22 burdens of a contract, not -- well, I'm still -- I'm trying to
23 explain to you why I'm confused by what you want to do here.
24 So that's what I am (indiscernible).

25 MR. MINTZ: I think a righting cause of action is one

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1 of the benefits of the contract. It's a right that flows from
2 the contract, and you're allowing them to sever a contract in a
3 way that's not permitted by 365. I acknowledge there may be
4 other legal grounds to do that under applicable nonbankruptcy
5 law, or under the terms of the contract, but that's a separate
6 determination.

7 I maintain that as a matter of -- the law regarding
8 365 does not permit the severability of contracts between
9 assumption and assignment, and a cause of action is no
10 different from any other right or benefit under the contract.
11 It's a benefit under the contract --

12 THE COURT: But you still don't agree with me then
13 that when something gives rise to what traditionally might be
14 called a cause of action, that that somehow is a separate right
15 -- sorry, I used the same word -- it's a separate entitlement
16 that I, as an injured party, can retain apart from my
17 contractual relationship. You seem to be --

18 MR. MINTZ: I think if it --

19 THE COURT: -- (indiscernible)

20 MR. MINTZ: I don't agree with that if it's a tort.
21 That's, of course, it's besides the contract, but if it's a
22 cause of action that's based on a contractual claim, a breach
23 or other claim that arises under the contract, to govern by the
24 terms of contract, and the party that's retaining the --
25 generally retaining the benefits and burdens of that contract

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1 have to be the one who maintains those rights. Otherwise,
2 you're allowing 365 to effectively cherry-pick and say the
3 debtor can keep these provisions, and pass along these other
4 rights. The contracts may very well have provisions that
5 govern what happen with respect to these types of cause of
6 action, whether there's limitations on damages, or other
7 provisions that implicate those things, and that are affected
8 by the debtors' own conduct.

9 As I alluded before, if the debtor takes action that
10 breaches the contract, after post-effective date, under the
11 terms of the contract, that may have material implications on
12 the cause of action. It's not clear how that would play out in
13 the situation that's being proposed right now, and therefore,
14 it creates a great deal of prejudice for someone who is party
15 to one of these contracts.

16 But again --

17 THE COURT: Well, if the debtor breaches --

18 MR. MINTZ: -- I don't think it's --

19 THE COURT: If the debtor breaches the contract post-
20 effective date, that's easy to me, for me to understand, but
21 what -- suppose -- let's use a more concrete example, and
22 again, I'm going to try to make this general without trying to
23 identify it, but we know that there are claims that the debtor
24 may have against some of its counterparties to -- for
25 vegetation management. If it assumes a contract, and goes

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1 forward in its relationship with that party, but assigns to the
2 tort committee -- tort trust -- excuse me, the trust, the right
3 to sue that person for pre-petition conduct, why is it linked
4 to the assumption? Why isn't it what I said before? Why isn't
5 it the separating out an entitlement to sue someone for harm
6 that existed before bankruptcy, apart from the 365 process?

7 If you -- look it, if they rejected the contract,
8 they'd still have the right to sue someone that damaged him.
9 If you have a right to sue somebody when you reject a contract,
10 why can't you sue it even though you've assumed the contract?

11 MR. MINTZ: Well, they may be able to, Your Honor, but
12 that's going to depend on the terms of the contract, and what
13 that may say with regard to how those rights may be preserved.
14 It's governed by the contract. That's my point, Your Honor,
15 and Your Honor isn't in a position to make the judgment cross
16 the tens of thousands of contracts that the debtor is going to
17 be assuming what's going to happen with those causes of action.

18 So all I'm suggesting, Your Honor, is that all rights
19 should be reserved with regard to whether the assigned rights
20 and causes of action, may be assigned pursuant to the
21 applicable contract, and what the implications and defenses
22 that may flow from that consequence.

23 So you know, that's the piece of this that I'm focused
24 on, Your Honor. The contract, for example, might say -- might
25 expressly prohibit an assignment like that, and may say to the

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1 extent that the debtor does that, the contract is void, and
2 there's no liability thereunder. I don't -- it's an unusual
3 type of provision but if it said something like that, this
4 shouldn't override that.

5 THE COURT: Okay.

6 Mr. MacConaghy?

7 MR. MACCONAGHY: Your Honor's question picked up a lot
8 of my points. I just have a few things to add. First off,
9 starting with the December 2019 tort committee RSA, this term
10 "assigned rights and causes of action" was created and it gave
11 a very expansive definition that included all choses in action
12 related to the fires that the debtors may have against third-
13 parties. There was no exclusion whatsoever as to causes of
14 action relating to executory contracts.

15 The Court approved the RSA, including after a response
16 by Adventist, then the same language was included in the plan
17 and disclosure statement, and based on the assumption by the
18 TCC, and the consenting fire plaintiffs that we were getting
19 all these rights, we delivered the votes of 45,000 people to
20 accept the plan.

21 Now after all the votes are counted, the ad hoc
22 objectors, and somewhat disturbingly, it seems the debtors were
23 trying to take those rights back. So this is in the plan right
24 now, that the TCC gets all of these rights, and if there was
25 something in AT&T's contract that somehow prevented this, or

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1 created a bar, I think it was incumbent upon AT&T to make an
2 evidentiary showing, and attach a copy of its contract to its
3 latest pleading.

4 I want to just --

5 THE COURT: Well, wait a minute. What should AT&T --
6 what would they have done, impose the assumption, or they can't
7 -- they're not opposing just today's (indiscernible)?

8 MR. MACCONAGHY: Object to confirmation on that basis.
9 Say oh, we saw on the plan that the debtor wants to assign all
10 rights and causes of action to the Fire Victim's Trust, and
11 they can't do that, and here's the provision of our executory
12 contract with them that bars them from doing that.

13 And instead of making that kind of evidentiary
14 showing, AT&T's counsel now are saying well, there may be
15 things and tens of thousands of contracts that we don't know
16 about. Well, who cares about tens of thousands of contracts?
17 It's the AT&T Comcast contract that is at issue now.

18 THE COURT: Do you perceive a distinction between
19 rights and causes of action in the phrase here?

20 MR. MACCONAGHY: Well, under -- I think rights might
21 include setoffs, recoupments, other defenses. The term
22 assigned rights, and causes of action is a defined term in the
23 plan, and it includes all sorts of stuff.

24 THE COURT: But if not, then I don't --

25 MR. MACCONAGHY: Plan --

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1 THE COURT: -- I don't have it -- well, I do have it
2 here, well I got --

3 MR. MACCONAGHY: I can --

4 THE COURT: -- the plan keeps changing. Well, wait a
5 minute, I just have to get one. I've got the June 7th version
6 of it here. So you're right, that's a defined term, and so let
7 me -- let's look at the defined term. Well, rights -- well,
8 there's a schedule of assigned rights and causes of action,
9 1.89. Are you looking at a -- is there a different section on
10 this --

11 MR. MACCONAGHY: I'm looking at the definition which -
12 -

13 THE COURT: Oh, it's in 1.8.

14 MR. MACCONAGHY: 1.8.

15 THE COURT: 1.8.

16 MR. MACCONAGHY: Yes.

17 THE COURT: Okay. So let's -- let me take a look at
18 that, so -- so there's no reference to 365 in that definition,
19 is there?

20 MR. MACCONAGHY: No.

21 THE COURT: So that to me is consistent with my
22 opening comment on the subject that there are rights, and
23 again, the word causes of action -- oh, there, it's cause of
24 action as defined over in 1.21.

25 MR. MACCONAGHY: Yes.

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1 THE COURT: It's sort of like first-year law school,
2 what a cause of action is, and it's pretty similar to what a
3 claim is under Section 101 of the Bankruptcy Code, but -- and I
4 don't know if the word "rights" is defined. I can find out.
5 Every single other term is defined, so it probably is too.

6 Well, no, the word rights isn't defined by itself.
7 It's -- so we'll have to leave to the legislative history to
8 figure what does rights mean. It's not in the definitions.

9 But in any event, the -- Mr. MacConaghy, you seem to
10 be agreeing with me, and you probably will agree with me, if
11 you think I'm going your way here, that this bundle of rights
12 to sue people, and to do whatever other thing goes with
13 R-I-G-H-T, rather than cause of action, it goes to the trust
14 with the schedule of them, whether or not there is a related
15 executory contract being assumed. Is that --

16 MR. MACCONAGHY: Correct.

17 THE COURT: -- is that a fair way of restating? Mr.
18 Karotkin, do you agree with that interpretation?

19 MR. KAROTKIN: I think that -- I think, Your Honor,
20 what the debtors are assigning is the defined term of "Assigned
21 Rights and Causes of Action", and what is within the scope of
22 that. And that is very -- that is it. That is what is being
23 assigned, nothing more and nothing less than that.

24 And whether or not a particular cause of action that
25 the trust elects to assert falls within that definition would

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1 have to be determined at the time because we can't think about
2 every single possible claim the trust might elect to assert.
3 And if a dispute arises at that time as to whether something is
4 an assigned right and cause of action, it can be addressed at
5 that time, whether if it's within the scope of it.

6 And I think what Mr. Mintz is saying is the debtors
7 can only assign what they have the right to assign. And I
8 think that there is some logic to that. The debtors can only
9 assign what they have the right to assign. I don't think the
10 Bankruptcy Code can override that. And that question, if it
11 comes up, can be addressed at the appropriate time as well.

12 So I think that, again, those things are pretty clear.
13 We can only assign what we can assign, and we're only assigning
14 what is within the concept or scope of assigned rights and
15 causes of action --

16 THE COURT: Okay.

17 MR. KAROTKIN: -- and that is why --

18 THE COURT: But I understand that.

19 MR. KAROTKIN: That's why we have a problem with this
20 paragraph.

21 THE COURT: And I --

22 MR. MACCONAGHY: Your Honor, if I may respond to Mr.
23 Karotkin.

24 MR. KAROTKIN: At the very least -- if I just could
25 finish a little bit -- at the very least --

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1 MR. MACCONAGHY: Well, you kind of interrupted me, Mr.
2 Karotkin, but --

3 MR. KAROTKIN: No. Actually, Judge, I --

4 THE COURT: I -- no. I asked Mr. Karotkin the
5 question, so finish your point, Mr. Karotkin.

6 MR. KAROTKIN: Okay. So if you look at the second
7 paragraph of this proposed language -- and Your Honor, I think
8 it's important to keep in mind that we've just seen this
9 language. This is something new that was proposed by the TCC.
10 And as I said before, this is not in -- as I said, this is not
11 in a proposed confirmation order that was filed with the court.
12 This is their suggested language, which we're trying to work
13 through with them.

14 We think certainly, the second half of that paragraph
15 goes beyond what is provided for in the plan. We think, as I
16 mentioned earlier, we can work that language out with the TCC
17 and appropriately address the concerns we have with that. So
18 once thing I would say, Your Honor, that we would hope that you
19 would give us the opportunity to do that and reserve decision
20 on this issue so we can try to work it out. And at the same
21 time, we may be willing -- we may be able to address some of
22 the issues that Mr. Mintz has raised. So that's why -- as I
23 said, this is new to us, this language. It's new to us.

24 THE COURT: Okay. So Mr. Karotkin, just answer me a
25 couple of questions historically, though. There is no

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1 independent definition of the word R-I-G-H-T-S in the document,
2 correct?

3 MR. KAROTKIN: That is correct.

4 THE COURT: So --

5 MR. KAROTKIN: Assigned rights and causes of action
6 are defined -- that is the entirety of the term, okay?

7 THE COURT: So if the word --

8 MR. KAROTKIN: It is self-contained. Self-contained.

9 THE COURT: If you took the word "Rights" out of the
10 caption, is there any substantive change to the way 1.8 would
11 operate? So it just said "Assigned Causes of Action"?

12 MR. KAROTKIN: I don't think so. I don't think so --

13 THE COURT: Okay.

14 MR. KAROTKIN: -- because one point -- that's just a
15 name.

16 THE COURT: Yeah.

17 MR. KAROTKIN: That's just a defined term. That's --

18 THE COURT: Absolutely.

19 MR. KAROTKIN: The defined term, Assigned Rights and
20 Causes of Action, is what it is. It's not separate defined
21 terms of "Assigned Rights" and "Assigned Causes of Action". It
22 is what it is in the plan, Your Honor.

23 THE COURT: And there's nothing in this definition
24 that links it to 365.

25 MR. KAROTKIN: No, but --

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1 THE COURT: And so what's being assigned would be
2 assigned to the trust whether the contract is assumed or
3 rejected, right?

4 MR. KAROTKIN: I think that that's correct if we have
5 the legal authority to do so. I don't see any reason, sitting
6 here today, why we wouldn't. But --

7 THE COURT: Okay.

8 MR. KAROTKIN: But it --

9 THE COURT: I'm going to --

10 Mr. MacConaghy, I'm going to -- you were cut off, but
11 mostly by me, but I'm going to -- I'm inclined now to let Mr.
12 Karotkin's suggestion take effect and let this simmer a little
13 longer. I don't see -- what, to me, was a very narrow question
14 is obviously a bigger question, and I don't feel like I even
15 got my arms around it at this point because I can't get a
16 document that was filed at 10 o'clock this morning that raises
17 an issue that at 2 o'clock I have to make a critical decision
18 about it.

19 And I'll stick with my first decision on issue one,
20 but I think the safer thing to do is to let the debtor and the
21 TCC and the trustee and the objectors see if they can come up
22 with some resolution of this because the last thing in the
23 world we -- well, yeah. I'll leave it at that.

24 Mr. Mintz, I said at the outset of this phase of the
25 argument that I thought you had the shorter end of the

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1 argument, but at the moment, I'll just take the -- I'll say
2 we're at an even position at this point now because I don't
3 feel comfortable trying to decide it. Now, the question is
4 when should I have to decide it? Hopefully, not at all.
5 Hopefully, you'll resolve it.

6 MR. JULIAN: Your Honor, we're certainly prepared to
7 work on language to try to resolve the issue, Your Honor.

8 MR. MACCONAGHY: Your Honor, in that regard --

9 THE COURT: Okay.

10 MR. MACCONAGHY: -- the TCC thinks it's very important
11 that this be incorporated into the confirmation order. The
12 debtor made an argument to the contrary in this thing that they
13 filed at 10. We think it's important that this have -- that
14 this provision dealing with these assigned causes of action
15 have the preclusive effect of a confirmation order. And
16 there's -- everybody's under a lot of pressure to get that
17 done, so let's get it done.

18 MR. KAROTKIN: Your Honor, I'd just like to reply to
19 that very briefly.

20 THE COURT: Okay.

21 MR. KAROTKIN: I understand Counsel's -- I understand
22 Counsel's request. We're anxious to get it done too. I think
23 we need to also be cautious, very cautious. And I think this
24 is the reason they want it in the confirmation order, is that
25 the plan and the confirmation order provide that they control

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1 over the definitive documents in this case. And I think we
2 have to be very, very careful of including certain plan-
3 implementing documents as exhibits of the confirmation order
4 and others as not. So I just throw that out there, Your Honor,
5 because I think that's a very important issue.

6 THE COURT: Well, one of the things that, Mr.
7 Karotkin, from the first day I met you a year and a half ago, I
8 probably complained about some things being dumped into the
9 order when it ought to be in the moving papers. And of course,
10 now, seventeen months later, days before we're at the critical
11 moment, this confirmation order just keeps growing and growing
12 and growing.

13 And so it's one of those things I worry about because
14 I was trained in the concept that the plan is the contract.
15 The plan is what makes the rules. And the plan can mean plan
16 and supplement and other things. And the order is just the
17 judicial blessing that says, this is for real.

18 But I'm not going to go back and say, we've got to go
19 back to a one-sentence confirmation order, and I'm going to not
20 get hung up on this. But it is critical, and I want the
21 principal lawyers who are dealing with this problem and the
22 related problems just to keep that in mind. It doesn't do
23 anyone any good -- any fire victim, any creditor, anybody who
24 has anything to do with this case -- to have to have more
25 ambiguity by trying to sort through what was in the order, what

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1 was in the operative document or supplement to it that gets
2 changed every minutes. So I won't make any more speeches, and
3 I'm not going to do a one-sentence confirmation order. But I'm
4 troubled by it getting out of hand.

5 Mr. Karotkin, I will take your advice, urge you to get
6 to work with Mr. Mintz and Mr. MacConaghy and to the extent
7 that Mr. Molton's involved in this, whatever -- and anyone else
8 to get it done.

9 Now, you need to tell me what's going to happen. I
10 think I previously indicated that I wanted to see what the
11 latest version of the order is, and I see from the docket,
12 earlier this afternoon you filed a seventh supplement. But is
13 there -- what's your expectation for when you can place on the
14 docket the latest version of the confirmation order?

15 MR. KAROTKIN: Well, definitely this evening.

16 THE COURT: Okay. Until it changes tomorrow, right?

17 MR. KAROTKIN: Until it changes -- yeah. Yeah. I'll
18 reserve all rights. The comments --

19 MR. JULIAN: Your Honor, in that --

20 MR. KAROTKIN: -- the comments are still coming in.

21 MR. JULIAN: Your Honor, your order requires parties
22 to kind of raise their hand on any issues with this
23 confirmation order that's going to be filed tonight by tomorrow
24 morning. But we're hearing that the confirmation order remains
25 a moving target and is still subject to further negotiation, so

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1 it seems like we may be getting ahead of that process. And I
2 don't know how many times we want to kind of partially argue
3 these issues while things are still moving.

4 THE COURT: No. And I don't want to do that too.
5 That's difficult for all of you. It's difficult for me. It's
6 almost impossible for me. I'm sitting here by myself looking
7 at the docket wondering what's the next fifty-page document I
8 have to read in time for the hearing that's in twenty minutes.
9 And that's not fair to me, but it's also not fair to your
10 clients and to the goal we're all involved in with.

11 But that being said, there's still some major issues
12 out there. What I had in mind for tomorrow and the so-called
13 raise your hand was, I thought, a very narrow issue pertaining
14 to the indemnity language that for -- in large measure, a lot
15 of things got resolved. So the last thing in the world I want
16 to do is to make more confusing for everybody when I'm sending
17 out a docket text saying, somebody please bring me up to speed.

18 And I'm still on track in my own mind to issue at
19 least a decision on -- the confirmation decision, and it may
20 well be that the thing that I have to do after that -- if I am
21 inclined to indicate that I will confirm the plan -- is to have
22 another hearing within days. But to use a term that Mr.
23 Karotkin would know -- it's a New York term -- to settle the
24 order. And I mean, I just can't take the risk of having
25 everybody going around, which order? What's he signing? What

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1 order applies? We've got to get to the point where everybody's
2 in agreement.

3 So I'm going to conclude this hearing by just
4 reiterating on the record, I disposed of the first of the two
5 issues that the objectors and the TCC and the trustee presented
6 to me for resolution. That has to do with the de novo review.
7 I've clarified that on the second issue. I've deferred it till
8 a further something, a further -- an agreed order or a further
9 hearing or a further something. I'm not going to -- I'm not
10 going to make any judicial determinations. I'm assuming my
11 decision on the jury -- excuse me, on the judicial review will
12 be memorialized in whatever Mr. Molton and the objector's
13 counsel agree on.

14 So unless someone --

15 MR. ZUMBRO: Your Honor, may I be heard briefly --

16 THE COURT: Yes, sir --

17 MR. ZUMBRO: -- on a housekeeping matter.

18 THE COURT: Yes. Just say your name again. I know
19 what it is, but for the record, Mr. Karotkin.

20 MR. ZUMBRO: Sure --

21 MR. KAROTKIN: It was somebody else.

22 THE COURT: I'm sorry.

23 MR. ZUMBRO: It's Mr. Zumbro, Your Honor, from Cravath
24 on behalf of the debtors. I was just hoping that I might be
25 heard briefly on a housekeeping matter.

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1 THE COURT: Okay. Let's go to you, Mr. Karotkin
2 first, and then Mr. Zumbro.

3 MR. KAROTKIN: No, Your Honor, I didn't have -- I
4 didn't raise my hand.

5 THE COURT: Oh.

6 MR. KAROTKIN: I'm sorry. That's was Mr. Zumbro who
7 spoke up.

8 THE COURT: Okay. Mr. Zumbro, yes, sir?

9 MR. ZUMBRO: Yes, sir. I just wanted to advise the
10 Court that we did file the proposed exit financing order that
11 Mr. Karotkin had mentioned to the Court the other day.

12 THE COURT: Yes. I'm aware of that.

13 MR. ZUMBRO: I can't remember exactly what day --
14 okay.

15 THE COURT: No. I'm aware of it.

16 MR. ZUMBRO: But I just wanted to make sure --

17 THE COURT: I have it, but I'm not -- you're not
18 expecting me to sign it yet, are you?

19 MR. ZUMBRO: Well, we were hoping if the Court were
20 inclined to do so. The one provision we put in -- we did put
21 in something in the order that makes it clear that we can't
22 consummate an equity offering or an equity issue until the
23 registration rights agreement issue has been resolved. That's
24 in paragraph 10 of the proposed order. But we were hoping that
25 the Court, if it were so inclined, would go ahead and enter the

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1 order which has been approved by both the TCC and the UCC. And
2 hopefully, we can be back to you quickly on those other issues.
3 But we would like to get it entered if Your Honor was so
4 inclined.

5 THE COURT: Well, Mr. Zumbro, I'm glad you raised this
6 question. Well, I'm so inclined to do anything that I'm
7 supposed to be doing, but the problem is -- let me just look at
8 something here. One second. Yeah, it's called -- make sure
9 we're clear, this is document 7881 -- excuse me, 7888-1,
10 order --

11 MR. ZUMBRO: Correct. 788-1 (sic).

12 THE COURT: -- order approving plan funding. Yeah.
13 See, that came over the docket last evening. Seems like a
14 month ago. And I printed it and had it on my stack of things
15 to review this morning, but I had no indication that anybody
16 had signed off on it. And maybe there's something on the
17 docket. But again, the docket, every time I turn around,
18 there's twenty more things on there. So --

19 MR. ZUMBRO: Yeah. We apologize. It is in the
20 notice, Your Honor. If you look in the notice, which is the
21 docket 7888, there is an indication in the one, two, three,
22 four, five, sixth paragraph that the proposed order has been
23 reviewed and approved by counsel to both the official
24 creditors' committee as well as the official tort claimants'
25 committee as per Your Honor's instruction.

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1 THE COURT: Mr. Zumbro, you've only got one judge
2 operating on a laptop at home, in shelter-in-place, and trying
3 to keep up with you. And I just simply saw that the order was
4 there and decided to read it. I didn't take time. I take your
5 representation. I take your word for it. I will sign it later
6 today, and it'll be on the way.

7 MR. ZUMBRO: Thank you very much. We appreciate it.

8 MR. KRELLER: Your Honor --

9 THE COURT: Okay. Okay.

10 MR. KRELLER: Your Honor, this is Thomas Kreller with
11 Milbank LLP on behalf of the official unsecured creditors'
12 committee. Just for the record, I just want to affirm that Mr.
13 Zumbro is correct. The official committee has reviewed the
14 order, and we have no objection to its entry.

15 THE COURT: Okay. Okay. Thank you. All right.

16 Okay. Let me say one more thing because I might
17 have -- I hope I haven't made more confusion than I intended.
18 I didn't intend any confusion. But the docket text that I sent
19 out -- one of the docket texts I sent out last night about
20 possibly having a hearing tomorrow was to try to see if there
21 were any open issues on what I'm going to call the indemnity
22 and contribution claims. But it seems to me that the safer
23 thing to do is just to leave that open and tell Mr. Karotkin to
24 put it on his list to try to get it resolved because it just
25 doesn't lend itself into one little package.

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1 So Mr. Karotkin, unless you think something would be
2 beneficial and we'd be well-served by having yet another
3 hearing tomorrow, I will cancel that and leave to you and
4 others to see if you can continue to get some of these
5 unresolved issues resolved. Is that -- what do you prefer?

6 MR. KAROTKIN: I think that might be a good idea. I
7 note that something was just filed by the unsecured creditors'
8 committee in response to what we filed. I don't know what it
9 says. I think some of the issues may go to our discussions
10 with the TCC on some of the setoff language. I'm not that
11 optimistic we will resolve everything with the UCC, but we may
12 be able to do something, so I forgot what time you had
13 scheduled the hearing for tomorrow?

14 THE COURT: I didn't know. I didn't set a time --

15 MR. KAROTKIN: Oh, okay.

16 THE COURT: -- because I didn't know whether it would
17 be necessary. I mean, the problem, again, is that things are
18 happening so quickly that I can't keep up with the changes on
19 my own here, and I am mindful of the clock ticking. It's June
20 11th. I had a trial and I had matters submitted, and I'm
21 trying to put them all together.

22 MR. KAROTKIN: Right.

23 THE COURT: And I would -- I'm prepared to run the
24 risk that if I announce a decision, it'll be still we have to
25 get this order straightened out. I'm not going to sign an

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1 order that is pages and pages and pages long that has been
2 changed two hours earlier. And that's not fair to anyone. So
3 I really mean it. We might be best served by having a short
4 period of time when the agenda will be to literally go down
5 every single open paragraph and hear what do people agree or
6 disagree on and at the end of the day -- or evening -- have an
7 order that is called the confirmation order.

8 MR. KAROTKIN: Right.

9 THE COURT: What I called the OCP. So I think the
10 safer thing then -- and for the number of people that are
11 hearing today, and I will put something on the docket this
12 afternoon -- I will not have a hearing tomorrow on the
13 unresolved issues that relate to what was framed by Calpine and
14 debtor and the OCC and the Cal Municipal agencies and so on.
15 They're too interrelated.

16 And to the extent that, Mr. Karotkin, you can get some
17 order, that'd be fine -- order in the order -- and somehow keep
18 me informed by filing an up-to-date status statement or
19 something, whatever you feel comfortable doing that can send me
20 the signal.

21 MR. KAROTKIN: Okay.

22 THE COURT: So for now, there's nothing I'm scheduling
23 for tomorrow. I'm continuing to work on the matters submitted.
24 And of course, unrelated to that, there's one open issue
25 between the trustee and the state and federal agencies, but

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1 that doesn't seem to attract anyone else's attention, and I'm
2 dealing with that separately.

3 So all right. Unless somebody desperately needs to be
4 heard, I'm going --

5 MR. KRELLER: Your Honor --

6 THE COURT: Here if I would have known we were going
7 to go this long, I would have gone on the video.

8 Yes, sir, the last person to speak.

9 MR. KRELLER: Your Honor, I apologize; Thomas Kreller
10 again of Milbank on behalf of the official unsecured creditors'
11 committee. I did have one item that is not clear to us at this
12 point. I know there's a docket order requiring that the
13 debtors file a revised confirmation order and plan supplement
14 by the end of the day today.

15 There's no such requirement with respect to seeing a
16 revised plan, and these -- clearly, there are obviously a
17 number of issues kind of popping up in different places. But
18 until we have a full set of a proposed order revised, a
19 proposed plan revised, and whatever further revisions there
20 might be to a plan supplement, it is awfully difficult to kind
21 of pin down all of the open issues.

22 So I don't know whether there's a contemplation.
23 We've been requesting an updated version of the plan so that we
24 can try and make sure we've captured all of our issues. I
25 don't know what the contemplation is with respect to seeing a

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1 revised plan, but.

2 THE COURT: Well, I'm not going to ask Mr. Karotkin to
3 answer that question because, again -- and again, it's such a
4 moving target. I understand your point, Mr. Kreller, and
5 again, I'll go back to I feel the same way. How can I keep up
6 with an order if the plan or the plan supplement is being
7 changed? So I'll leave it at that at this point.

8 Okay. I'm going to --

9 MR. KAROTKIN: The plan supplement -- oh, I'm sorry,
10 Your Honor. Mr. Karotkin.

11 THE COURT: Go ahead.

12 MR. KAROTKIN: The plan supplement was filed.

13 THE COURT: Okay. The plan supplement was filed. Mr.
14 Karotkin, I will relieve you of the requirement that today you
15 file a proposed order confirming because it may change
16 tomorrow. So you know what you're up against --

17 MR. KAROTKIN: Yes.

18 THE COURT: -- to try to keep me and the principal
19 players informed. I don't know what else we can do. And I'm
20 still --

21 MR. KAROTKIN: Okay.

22 THE COURT: -- intending to get some sort of a
23 reasoned decision out early next week. So that's my game plan.

24 MR. KAROTKIN: Okay.

25 THE COURT: And I --

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1 MR. KAROTKIN: But Your Honor --

2 THE COURT: Yes?

3 MR. KAROTKIN: I'm sorry. I just want to make sure I
4 understood you correctly. You are not requiring that we file a
5 proposed order tonight? Tonight's --

6 THE COURT: No. Because it's going to -- because it's
7 changing so quickly. That's why.

8 MR. KAROTKIN: Yes. No. It's fine. I'm not arguing
9 with you. I just wanted to make sure I understood.

10 THE COURT: Okay. All right. Thank you for your
11 time, everyone.

12 MR. KAROTKIN: Thank you.

13 THE COURT: Talk to you or see you at the next
14 hearing. Bye-bye.

15 MR. KRELLER: Thanks, Your Honor.

16 MR. KAROTKIN: Thank you very much.

17 MR. JULIAN: Thank you, Your Honor.

18 (Whereupon these proceedings were concluded)

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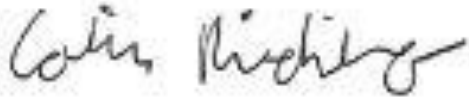
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C E R T I F I C A T I O N

I, Colin Richilano, certify that the foregoing transcript is a true and accurate record of the proceedings.



/s/ COLIN RICHILANO

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Date: June 12, 2020

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